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12643/210

Serial No.: 09/650,335

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND PATENT INTERFERENCES

In re U.S. application of:	Jeffrey A. Giacomel
U.S. Serial No.:	09/650,335
Filed:	August 28, 2000
Group Art Unit:	3753
Examiner:	A. Flanigan
For:	FOOD PREPARATION AND STORAGE DEVICE

Commissioner for
Patents
PO Box 1450
Alexandria, VA. 22313-1450

CERTIFICATE OF MAILING
(37 CFR 1.8a)

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Date: June 7, 2005

William R Gustavson
(Typed name of person mailing paper)

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Dear Sir:

REPLY BRIEF ON APPEAL

This reply brief is filed in furtherance of the Appeal filed in this application on February 17, 2005 and in reply to the Examiner's Answer mailed on April 11, 2005.

A. The Examiner's argument to sustain the Rejection of Claim 9 under 35 U.S.C. Section 112, first paragraph is Respectfully Challenged

The reasons Claim 9 is proper under 35 U.S.C. Section 112 set forth in Appellant's Brief on Appeal are still valid in view of the Examiner's Answer. However, it is believed further clarification in light of the Examiner's Answer would be helpful.

The Examiner states "the temperature of different regions within the mass will most definitely vary". However, this is not the issue. The temperature monitor can provide an accurate measure of the temperature of the mass of product because the claimed apparatus is a passive device with high thermal conductivity. If the claimed apparatus had an active heating element in it, such as a resistance heater, the apparatus temperature would be much closer to the temperature of the heating element than the mass of product in which the apparatus was inserted and a temperature monitor would not provide an accurate measure of the mass of product. The phrase "accurate measure" must be interpreted in light of the intended use of the claimed invention. For heating food, for example, only such an "accurate measure" of temperature as would indicate the food is at the correct temperature to serve is required.

The Examiner's characterization of "accurately" as being "an error free way" is far to rigid. In that sense, no temperature can be accurately measured as no physical characteristic is capable of being perfectly measured. The measured temperature is accurate enough for the purposes for which the claimed invention is intended. The use of multiple input heat transfer elements provides maximum surface area in contact with the mass of product and assures no product is more than half the spacing between adjacent input heat transfer elements away from a heat transfer surface to maximize the heat transfer into and out of the mass of product and minimize temperature gradients in the mass of product.

The Examiner's arguments on page 7 of the Examiner's Answer are not fully understood. It may be the Examiner is confusing Applicant's recitation of a "steady state heat transfer" condition with a "steady state" condition. In other words, if one was to take the claimed apparatus, say formed of aluminum, out of a freezer, where it had come to a "steady state" temperature of freezing (ie no net heat flow to or from the apparatus within the freezer), and then inserted it within a pan of refried beans just out of the oven, the temperature of the apparatus would of course differ from the refried beans for the short interval it would take to heat up the apparatus to near the temperature of the refried beans. However, very shortly, the apparatus would reach a "steady state heat transfer" condition where the apparatus would be very near the temperature of the refried beans due to the intimate contact the apparatus has with the beans and the high heat conductivity of the apparatus, but still be conducting heat to the surrounding environment to cool the beans. In this "steady state heat transfer" condition, which is not a "steady state" condition as the temperature of the beans and apparatus are decreasing as the beans are cooled, the temperature monitor does accurately measure the temperature of the beans and

provides an indication of how rapidly the beans are being cooled. Of course, once the beans have reached the desired final temperature, say freezing if the beans and apparatus were placed in a freezer, no more heat flow would pass through the apparatus and the apparatus and beans would then be in a "steady state" condition. The temperature monitor would then indicate the "steady state" temperature. Of course, by then, the job of the apparatus would be done and it would likely be removed to cool the next pan of refried beans or other foods to be cooled, or heated.

B. The Examiner's argument to sustain the Rejection of claims 1, 4, 6, 7, 24, 31, 33, and 35 under 35 U.S.C. Section 102 over Snyder is Respectfully Challenged

Claim 1 requires at least two input heat transfer elements for extending into the mass of product with the elements in parallel spaced planes. It also requires at least one output heat transfer element exposed to an ambient temperature environment. Snyder simply discloses a grid 310(the Examiner refers to this single recited piece as "parallel ridges 310" as if the single piece were multiple pieces, thus using a phrase not in the Snyder patent), not input heat transfer elements in parallel spaced planes. Snyder could not practically be placed in a mass of product without both what the Examiner characterizes as the "ridges" 310 and "base" simultaneously being placed in the product, defeating the purpose of the present invention in having input heat transfer elements extending into the mass of product and at least one output heat transfer element exposed to an ambient temperature environment to rapidly change the temperature of a mass of product.

Applicant disagrees with the Examiner that Claim 4 concerns only the intended use of the apparatus. Claim 4 recites structure, ie pan contacting surfaces, on the input heat transfer elements. Snyder does not disclose such structure.

Applicant disagrees with the Examiner with regard to Claim 24. The "ridges" 310 and "base" of Snyder would have to simultaneously be placed in the food, defeating the purpose of the present invention in having input heat transfer elements extending into the food and at least one output heat transfer element exposed to an ambient temperature environment to rapidly change the temperature of the food.

Applicant disagrees with the Examiner with regard to Claims 31 and 35. Claims 31 and 35 recite the length of the input heat transfer elements and how the length relates to other dimensions in the apparatus. The authority cited by the Examiner on page 10, footnote 3 of the Examiner's Answer supports the Applicant's position on the meaning of "length". As noted, an applicant is entitled to be his or her own lexicographer and may clearly set forth a definition of a term that is different from its ordinary and customary meaning. Accepting for the purposes of argument the correctness of the Examiner's position that "length" can normally mean only the greatest dimension of the claimed elements, it is clear here that Applicant has defined the term "length" at page 12, lines 25-28 of the application in a manner to support Applicant's arguments

that the length claimed is that dimension that extends away from the output heat transfer element and thus into the mass of product. The application states "[a]s shown in FIGURES 13A-C, the fins 106a, 106b, and 106c can have varied lengths to adapt the device to a particular size pan, for example, 4 inches, 6 inches and 10 inches in length to fit pans with these depths". As these input heat transfer elements are effectively fins, their length would naturally be the dimension extending into the mass of product as this effects their efficiency as heat transfer devices. Thus this length differs from the "length" defined by the Examiner as the long dimension of the "ribs" 10R in the Snyder patent (identified as "rails" 10R in the Snyder patent).

Applicant disagrees with the Examiner with regard to Claim 33. Claim 33 adds the recitation of a pan holding the mass of product. Claim 33 recites the "mass of product within the pan", thus clearly stating the pan is holding the mass of product. This is contrary to the Examiner's statement on page 10 of the Examiner's Answer that the pan is "for holding a mass of product", not that the pan "is holding a mass of product", quoting only a selected portion of the language in the claim . Further, chamber 22 or chamber 322 of Snyder is not a pan, it is a cavity.

C. The Examiner's argument to sustain the Rejection of claim 11 under 35 U.S.C. Section 102 over Reed is Respectfully Challenged

Applicant disagrees with the Examiner with regard to Claim 11. There is no showing that the handle 43 of Reed is removable.

D. The Examiner's argument to sustain the Rejection of claims 2, 20 and 32 under 35 U.S.C. Section 103 over Reed in view of Snyder is Respectfully Challenged

Applicant disagrees with the Examiner with regard to Claim 2. This claim adds the recitation that the at least one output heat transfer element defines a plurality of air contact fins. Snyder teaches away from air contact fins as Snyder uses heating elements to heat the grill. Air contact fins would simply dissipate the energy output by the heating elements used to cook on the grill. Reed teaches away from a nonstick coating in that, with the Examiner arguing that the advantages of such a coating would be self-evident to one of ordinary skill in the art, the fact that Reed does not specify such a coating is evidence that it teaches away from such a coating.

The Examiner does not give reasons for the rejection of Claim 20 with respect to its recitation of rectangular fins.

Applicant disagrees with the Examiner with regard to Claim 32. Claim 1, from which claim 32 depends, recites at least two input heat transfer elements in parallel "spaced" planes. The projecting grills 22 of Reed as characterized by the Examiner are not in parallel spaced

planes, but aligned along the same heat conducting fin 21 of Reed. If the Examiner states grills 22 of adjacent fins 21 are "spaced", they are not both in thermal contact with at least one output heat transfer element as recited in Claim 1.

E. The Examiner's argument to sustain the Rejection of claim 9 under 35 U.S.C. Section 103 over Snyder in view of Linger is Respectfully Challenged

Applicant disagrees with the Examiner with regard to Claim 9. Claim 9 claims an invention that allows the temperature of the mass of product to be measured, not the temperature of a heating element as in Linger. For example, once the heating element of Linger is up to its working temperature as measured by the sensor 46, the sensor 46 will not measure any variation in temperature during the entire course of cooking a hamburger on the stove from starting as raw hamburger until it is fully cooked. Linger certainly does not give any accurate measure of the temperature of the hamburger. The present claimed invention, in contrast, does give an accurate indication of the temperature of the mass of product because the apparatus is a passive device.

F. The Examiner's argument to sustain the Rejection of claims 25-27 under 35 U.S.C. Section 103 over Snyder is Respectfully Challenged

Applicant disagrees with the Examiner with regard to Claims 25 and 26. Claim 25 recites the length of the input heat transfer elements being not less than 4 inches. Claim 26 recites the length being in the range of 4 to 10 inches. The support for these dimensions is found in the application at page 12, lines 25-28, already discussed above in Paragraph B, where it is absolutely clear that "length" in the claims relates to the dimension argued by Applicant that extends away from the output heat transfer element and thus into the mass of product. Interestingly, the application at page 12, lines 25-28 refers to Figures 13A-C in which the longest dimension shown in those figures is the length as defined by Applicant.

Certainly, length can't be defined in claims 25 or 26 as any other dimension of the apparatus other than that argued by Applicant as the Examiner would have rejected the claims under Section 112, since no other dimension of the apparatus is taught in the application to be "not less than 4 inches" or "in the range of 4 to 10 inches".

As these input heat transfer elements are effectively fins, their length would naturally be the dimension extending into the mass of product as this effects their efficiency as heat transfer devices. Thus this length differs from the "length" defined by the Examiner as the long dimension of the "ribs" 10R in the Snyder patent (identified as "rails" 10R in the Snyder patent).

Applicant disagrees with the Examiner with regard to Claim 27. The Examiner states that

Applicant offered nothing beyond a conclusory statement that Snyder's ridges could not be considered a leading edge. Applicant, however, did point out that the tops of the rails 10R of Snyder are the only cooking surfaces Snyder has. They would not be considered leading edges for this reason. One cooks with a cooking surface, not a leading edge.

G. The Examiner's argument to sustain the Rejection of claims 28 and 29 under 35 U.S.C. Section 103 over Reed is Respectfully Challenged

Applicant disagrees with the Examiner with regard to Claims 28 and 29. The same reasoning as present above with regard to Claims 25 and 26 equally applies here. As these input heat transfer elements are effectively fins, their length would naturally be the dimension extending into the mass of product as this effects their efficiency as heat transfer devices. Thus this length differs from the "length" defined by the Examiner as the long dimension of the "ribs" 10R in the Snyder patent (identified as "rails" 10R in the Snyder patent).

CONCLUSION

For the reasons set forth above, allowance of claims 1, 2, 4, 6, 7, 9, 11, 20 and 24-35 is respectfully requested.

Respectfully Submitted,
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